

ADVISORY OPINION 2003-003

Any advisory opinion rendered by the registry under subsection (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the advisory opinion is rendered. KRS 121.135(4).

July 14, 2003

Hon. Spencer D. Noe
Republican Party of Kentucky
Capitol Avenue at Third Street
P.O. Box 1068
Frankfort, KY 40602

Dear Mr. Noe:

This is in response to your June 13, 2003 letter requesting an advisory opinion on behalf of the Republican Party of Kentucky ("RPK") and all of the Republican nominees for Kentucky office during the 2003 regular election. As you state in your letter, the 2003 General Assembly made various changes to the Public Financing Campaign Act of 1992 ("KRS Chapter 121A"). However, these changes do not represent deletions or repeals of KRS Chapter 121A. Rather, 2003 Ky. Acts ch. 156 (HB 269/FCCR) operates to suspend certain provisions of KRS Chapter 121A as part of the 2002-2004 biennium budget. Therefore, this advisory opinion is limited to current law in effect for the 2003 regular election, including 2003 Ky. Acts ch. 156 and any and all provisions of KRS Chapters 121 and 121A still in effect during the 2002-2004 biennium, as applied to the questions you pose.

You ask the following series of questions relating to the RPK and its nominees for the 2003 regular election, the Registry's response to which is below each restatement:

1. Are the nominees for Governor, Lieutenant Governor, Attorney General, Treasurer, Agricultural Commission, Auditor, and Secretary of State considered to be statewide nominees by the Registry?

The term "statewide nominee" is not defined under KRS Chapters 121 and 121A; however, certain provisions of KRS Chapters 121 and 121A may reference statewide candidates. Sections 70 and 91 of the Kentucky Constitution enumerate the constitutional state officers that shall be elected by the voters of the state, namely, the Governor, Lieutenant Governor, Treasurer, Auditor of Public Accounts, Commissioner of Agriculture, Secretary of State and Attorney General. Therefore, given its ordinary meaning, the term "statewide candidate" means any candidate running for an office that shall be elected by the voters of the state.

Unless otherwise noted, reference in this opinion to the terms "statewide candidate" or "statewide nominee" includes the Republican slate of candidates for Governor and Lieutenant Governor.

2. Under what circumstances may a statewide nominee's campaign rent and/or use without charge office space and equipment paid for by the political party?

There is nothing in KRS Chapters 121 and 121A to prohibit a statewide candidate or slate from renting at its fair market value office space and equipment paid for by the political party.

The provision of office space and equipment without charge, the value of which exceeds \$100 in the aggregate in any one election, shall constitute a contribution from the political party to the statewide candidate. There is no contribution limit for statewide candidates, other than for slates of candidates for Governor and Lieutenant Governor. See KRS 121.150(26) and KRS 121A.050(1).

3. Under what circumstance may a statewide nominee's campaign provide a political party with its campaign plan, travel schedule, policy statements, press releases, etc.? Once received by a political party what can the party do with those materials?

There is nothing to prohibit a statewide candidate's campaign from furnishing material relating to the campaign to the candidate's political party. Provided the materials are furnished by the campaigns, there would be no expenditure on the part of the political party. The materials may be displayed/distributed from the political party's headquarters

without being considered a contribution, provided no additional expense accrues to the political party. See KREF Advisory Opinion 1995-006.

4. May a political party inform its statewide nominees of its campaign plan and budget?

Yes. There is nothing to prohibit a political party from informing its statewide nominees of its campaign plan and budget.

5. Under what circumstances may a statewide nominee's campaign and a political party share surrogates for fundraising purposes, provided that each entity has its own event and pays for its own expenses?

There is nothing to prohibit a political party and its nominees from sharing a consultant for fundraising purposes, provided that the political party and each campaign committee utilizing the services of the consultant pay for its own or its representative share of events and expenses (including the consultant's fees).

6. Under what circumstances may a statewide nominee share survey (polling) results with other statewide nominees and/or a political party?

The Registry considered this exact question in KREF Advisory Opinion 1995-004, in which the Registry opined that the executive committee of a political party could share polling data with the Republican slate of candidates for Governor or Lieutenant Governor; “[h]owever, the poll would have value to the [slate] campaign, and if shared, would constitute an ‘in-kind’ contribution.” This interpretation is consistent with the definition of “contribution” under KRS 121A.010(11) and is comparable to federal law. See 11 CFR 106.4. Therefore, the Registry reaffirms its opinion as it relates to the facts you present. The same analysis may be applied to other statewide candidates.

7. The State Board of Elections provides that political parties maintaining a statewide list of registered voters may share it with all of its nominees. Under what circumstances may a statewide nominee share with the political party information to update the registered voter list?

The Registry considered this exact question in KREF Advisory Opinion 1995-004, in which the Registry opined as follows:

Voter registration lists and telephone number lists would either be purchased by the party from the State Board of Elections, which has a price list for such materials, or would be generated from another source at a cost to the party, and the cost of items furnished to candidates would have a value and thus, constitute a contribution to the candidate. Therefore, the party would be required to either

charge the candidate a fair market price for the voter registration or telephone lists or the value of such items should be recorded and reported as a contribution from the party to the candidate. We suggest that you review the State Board of Election's price list for assistance in arriving at a fair market price.

In response to your question, the Registry reaffirms this opinion. Similarly, a voter mailing list furnished by a statewide candidate or slate to the executive committee to benefit other candidates for Kentucky office would constitute an impermissible contribution under KRS 121.180(10) unless fair market value was paid.

8. Under what circumstances may a political party distribute collateral materials (bumper stickers, etc.) for statewide nominees?

See response to Question No. 3.

9. Under what circumstances may a political party host meetings involving statewide nominees and grass roots activists?

There is nothing to prohibit a political party from meeting with the Republican statewide candidates for the purpose of discussing grass roots activity. Provided the expenses associated with these meetings relate to generic party activity to benefit all statewide nominees of the RPK, no contribution would result.

10. Is a statewide nominee's campaign limited to receiving \$1,000.00 in the aggregate from the political party state executive committee or can a statewide nominee receive \$1,000.00 from each individual executive committee?

In KREF Advisory Opinion 1995-026, the Registry opined that the Republican National Committee and the State Republican Party were separate entities, specifically executive committees of a political party, and, therefore, under KRS 121A.050(1), each was permitted to contribute up to the maximum contribution limit to the Republican slate of candidates for Governor and Lieutenant Governor. Since the date of KREF Advisory Opinion 1995-025, the Kentucky legislature amended KRS 121A.050(1), which now provides:

A slate of candidates shall not knowingly accept a contribution from a natural person, permanent committee, state or county executive committee of a political party, or contributing organization of more than one thousand dollars (\$1,000) in any one election. Except for independent expenditures, no natural person, permanent committee, state or county executive committee of a political party, or contributing organization shall knowingly make a contribution of more than one thousand dollars (\$1,000) in any one (1) election to a slate of candidates. (Emphasis added.)

The amended language is clearly disjunctive, permitting the maximum contribution limit from state and county executive committees. Therefore, under KRS 121A.050(1), each state or county executive committee of the Republican Party may contribute and the Republican slate of candidates for Governor and Lieutenant Governor may accept up to the maximum contribution limit of \$1,000.

Regarding other statewide candidates, there is no limit on what the Republican Party may give. However, note that KRS 121.150(26) restricts the amount a statewide candidate, other than a slate of candidates, may accept in the aggregate from executive committees of any county, district, state or federal political party to the greater of \$10,000 or fifty percent (50%) of the total contributions accepted by the candidate.

11. Under what circumstances may a political party communicate with members of a statewide nominee's volunteer organization?

See response to Question No. 12, below.

12. Under what circumstances may a statewide nominee's campaign communicate with a political party?

In *Martin v. Commonwealth*, Ky., 96 S.W.3d 38 (2003), the Kentucky Supreme Court avoided invalidating KRS 121.150(1) (1994) by narrowly construing the phrase “consultation involving a...candidate, slate of candidates...or agent” in the former definition of “independent expenditure,” as limited to “consultation with a...candidate, slate of candidates...or agent regarding the content, timing, place, nature or volume of the communications for which the expenditure is made.” *Id.* at 56 (citing *Federal Election Comm’n v. Christian Coalition*, 52 F. Supp. 2d 45, 92 (D. D.C. 1999)). This narrow construction may also reasonably be applied to KRS 121A.010(13), the current definition of independent expenditure in the Registry’s interpretation of the level of coordination or consultation required to create a coordinated (or non-independent) expenditure, which is not excluded from the definition of contribution under KRS 121A.010(11).

In support of its narrowing construction, the Court held that

The hard core purpose of KRS 121.150(1) (1995) is not to prohibit “communications” but to prohibit “contributions” not made through the candidate’s or slate’s campaign manager or treasurer. The existence or absence of communication between a potential spender and a candidate, slate or agent thereof is relevant only to whether an expenditure is a contribution or an independent expenditure.

Id. at 52. With this narrowing construction, the Court clearly intended to distinguish consultation between a potential spender and a candidate or slate of candidates regarding the specifics of an advertising expenditure from the ordinary communication between a nominee for statewide office and his or her party executive committee regarding general campaign information.

Provided all expenditures relating to the promotion of an individual candidate or slate's candidacy are paid for by the individual candidate or slate, rather than by the party executive committee, no contribution would result. Further, since there are no spending limits imposed on statewide candidates, including slates of candidates for Governor and Lieutenant Governor during the 2003 general election, a statewide candidate or slate is limited only by its success at fundraising. If the party executive committee wishes to assist a statewide candidate or slate with the cost of advertising that advocates the election of a clearly identified candidate, it must be mindful of the contribution limit imposed by KRS 121A.050(1) and the percentage restriction of KRS 121.150(26).

13. Under what circumstances may a political party and its statewide nominee's campaign work together to build a volunteer grass roots organization?

See responses to Question Nos. 9 and 12.

14. Under what circumstances may a political party assist its statewide nominee's campaign with the logistics associated with the setup of campaign appearances at various locations around the state?

There is nothing in KRS Chapters 121 and 121A to prohibit a political party from assisting its statewide nominees with the logistics associated with the setup of campaign appearances. Provided any expenses incurred by the RPK associated with this logistical assistance will benefit all statewide nominees as opposed to assisting the gubernatorial slate nominees exclusively, no contribution would result.

15. Under what circumstances may a political party send an individual to speak at a public event on behalf of a statewide nominee?

A candidate's selection of a speaker to represent him or her at a public event, provided it does not involve the expenditure of funds, is not within the jurisdiction of the Registry. The executive committee of a political party may expend funds to provide a speaker at an event to benefit all statewide nominees for the 2003 election. However, if the speaker is sent to an event to benefit a single candidate or slate of candidates, the expenditures incurred by the executive committee would result in a contribution to the candidate or slate of candidates.

16. Under what circumstances may a political party assist a statewide nominee's campaign with scheduling, such as passing along gathered information on events and political functions to those nominees?

See response to Question No. 12.

17. To what extent can a political party communicate with the nominee's campaign to become informed of the nominee's general campaign plans so that there will be no duplication of effort by the nominee with that of the political party and vice versa?

See response to Question No. 12.

18. Has the Registry's interpretation of the meaning of "contribution" changed any from its definition set forth in KREF Advisory Opinion 95-006, if so, to what extent?

The definition of "contribution" at KRS 121A.010(11) was amended by the 1996 General Assembly to specifically exclude independent expenditures from the definition of contribution. Therefore, to the extent that KREF Advisory Opinion 1995-006 referenced or interpreted "contribution" to include independent expenditure, the Registry's opinion has changed consistent with the 1996 amendments to KRS 121A.010(11).

19. If the Registry was posed the same identical questions presented to it that resulted in the above Advisory Opinion 95-006 today, how would its answers and responses to those questions differ, if any?

KRS 121.135(4)(a) permits the Registry to render advisory opinions relating only to a specific transaction or activity. Therefore, the Registry may not consider hypothetical questions. In its response to several specific questions you ask, the Registry has referenced KREF Advisory Opinion 1995-006. To the extent that KREF Advisory Opinion 1995-006 applied to a publicly-financed slate of candidates and its party, the opinion would not be relevant to the 2003 Republican slate of candidates, since it has rejected public financing and since public financing has been suspended for the 2003 regular election.

20. Under what circumstances can a nominee use office space and equipment paid for by a political party in certain regions of the state so long as that office space and equipment is also made available to all statewide nominees of the same party?

See response to Question No. 2.

21. May a gubernatorial campaign committee organize/form an advisory board of volunteers who may individually or collectively: provide policy advice for the campaign; provide strategic advice for the campaign; solicit campaign contributions for the campaign; serve on select subcommittees of the campaign; promote the gubernatorial slate; or assist the coordination of other committees within the gubernatorial campaign committee, such as yard sign committees, campaign staff, direct mail, finance, media, etc.?

KRS 121 and 121A place no restrictions on the manner in which a slate of candidates may organize its campaign. Therefore, other than the position of committee chairman and the requirement that the slate campaign committee appoint a treasurer, whose duties are set forth by statute (KRS 121.160 and KRS 121A.070), there is nothing to prohibit the organizational structure you reference.

Sincerely,

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General Counsel

RFC/jh

Cc: Registry Members
Sarah M. Jackson, Executive Director